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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/628,734

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JUL 17 2006

Applicants : Jon A. Wolff et al

Filed : 07/28/2003

Art Unit : 1632

Examiner : Woitach, Joseph T.

Docket No. : Mirus.013.03.6

For: Intravascular Delivery of Non-Viral Nucleic Acid

Commissioner of Patents  
PO Box 1450  
Alexandria, VA 2231-1450PETITION UNDER 37 C.F.R. § 1.78(a)(3) TO ACCEPT A DELAYED  
CLAIM BENEFIT UNDER 35 U.S.C. 120 OF FILED  
NONPROVISIONAL APPLICATION

Dear Commissioner:

Applicant hereby petitions in accordance with 37 C.F.R. § 1.78(a)(3) to claim the benefit for this application under 35 U.S.C. 120 of Application No. 09/447,966 filed on November 23, 1999, which is a continuation-in-part of Application No. 09/391,260, filed Sep. 7, 1999, abandoned, which is a divisional of Application No. 08/975,573, filed Nov. 21, 1997, issued as U.S. Patent 6,265,387, which is a continuation of Application No. 08/571,536, filed Dec. 13, 1995, abandoned. Priority to Application No. 09/447,966 was claimed in the Application as originally filed.

A replacement paragraph to the specification indicating the priority claim is included with the attached amendment.

Applicant states that the entire delay between the date the claim for the benefit of the earlier application was due under paragraph (a)(5)(i) of 37 C.F.R. § 1.78 and the date this claim is filed was unintentional.

07/18/2006 MBINAS 00000005 10628734

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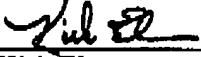
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Enclosed is a credit card pay form, please charge the amount of \$1370.00 to cover the petition fee as set forth in § 1.17(m).

Please forward the attached amendment and response to the Examiner.

If there are any questions, please contact the undersigned.

Respectfully submitted,

  
\_\_\_\_\_  
Kirk Ekena, Reg. No. 56,672  
Mirus Bio Corporation  
505 South Rosa Road  
Madison, WI 53719  
608-238-4400

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as express mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date: July 17, 2006.

  
\_\_\_\_\_  
Kirk Ekena

## [REPLACEMENT SHEET]

## CROSS-REFERENCE TO RELATED APPLICATIONS

This application is a Continuation-In-Part of U.S. Serial No. 09/447,966 filed on November 23,  
5 1999, issued as U.S. Patent 6,627,616, which is a continuation-in-part of Application No.  
09/391,260, filed Sep. 7, 1999, abandoned, which is a divisional of Application No. 08/975,573,  
filed Nov. 21, 1997, issued as U.S. Patent 6,265,387, which is a continuation of Application No.  
08/571,536, filed Dec. 13, 1995, abandoned.

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PTO/BB/17b (11-04)

Approved for use through 07/31/2007. OMB 0651-0031  
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**PETITION FEE**  
**Under 37 CFR 1.17(f), (g) & (h)**  
**TRANSMITTAL**  
(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents  
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	10/628,734	RECEIVED
Filing Date	07/28/2003	CENTRAL FAX CENTER
First Named Inventor	Jon A. Wolff	JUL 17 2006
Art Unit	1632	
Examiner Name	Wolbach, Joseph T.	
Attorney Docket Number	Mirus.013.03.6	

Enclosed is a petition filed under 37 CFR 1.78 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 1,370.00 is enclosed.

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(f), see form PTO/SB/17.

**Payment of Fees** (small entity amounts are NOT available for the petition fees)

The Commissioner is hereby authorized to charge the following fees to Deposit Account No. \_\_\_\_\_:  
 petition fee under 37 CFR 1.17(f), (g) or (h)     any deficiency of fees and credit of any overpayments  
 Enclose a duplicative copy of this form for fee processing.

Check in the amount of \$ 1,370.00 is enclosed.

Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

**Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462**

For petitions filed under:

- § 1.53(e) - to accord a filing date.
- § 1.57(a) - to accord a filing date.
- § 1.182 - for decision on a question not specifically provided for.
- § 1.183 - to suspend the rules.
- § 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
- § 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

**Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463**

For petitions filed under:

- § 1.12 - for access to an assignment record.
- § 1.14 - for access to an application.
- § 1.47 - for filing by other than all the inventors or a person not the inventor.
- § 1.69 - for expungement of information.
- § 1.103(a) - to suspend action in an application.
- § 1.198(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
- § 1.295 - for review of refusal to publish a statutory invention registration.
- § 1.288 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
- § 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.650(c) - for patent owner requests for extension of time in ex parte reexamination proceedings.
- § 1.955 - for patent owner requests for extension of time in inter partes reexamination proceedings.
- § 5.12 - for expedited handling of a foreign filing license.
- § 5.15 - for changing the scope of a license.
- § 5.25 - for retroactive license.

**Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464**

For petitions filed under:

- § 1.18(g) - to request documents in a form other than that provided in this part.
- § 1.84 - for accepting color drawings or photographs.
- § 1.91 - for entry of a model or exhibit.
- § 1.102(d) - to make an application special.
- § 1.138(c) - to expressly abandon an application to avoid publication.
- § 1.313 - to withdraw an application from issue.
- § 1.314 - to defer issuance of a patent.



Signature

Kirk Ekena

Typed or printed name

07/17/2006

Date

56,672

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.